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Legal Experts Warn of Repercussions

Westmoreland Case Could Inhibit Investigative Journalism

By Mary Thornton
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First Amendment experts yesterday described retired Army general William C. Westmoreland's agreement Sunday to drop his \$120 million libel suit against CBS Inc. as a major victory for the television network, but they warned that the cost of defending such a lawsuit could inhibit future investigative journalism.

Attorney Floyd Abrams, a prominent New York libel expert, called the dismissal a "significant victory for CBS, a significant defeat for Gen. Westmoreland.

"Gen. Westmoreland now finds himself in a situation where his reputation has been far more damaged by his bringing a lawsuit, pursuing it and then abandoning it than by anything CBS said about him," he said.

Westmoreland, the commander of U.S. ground forces in Vietnam, had claimed in his lawsuit that a 1982 CBS documentary libeled him by asserting that he had misrepresented enemy troop strength to his superiors, including President Lyndon B. Johnson.

Abrams said he believes that the dismissal will make potential plaintiffs "think a few more times before they commence an action, pondering that they could find themselves worse off."

But, he said, "The cost has been very high. The out-of-pocket cost was very high—in the millions of dollars—and the reputational cost has been high," especially in terms of public scrutiny of the internal CBS news gathering and editing process.

"It will deter some potential plaintiffs from suing; but the cost to CBS may deter some journalistic expositors of official misdeeds from pursuing their stories," Abrams said. He added that although CBS and other large news organizations may have the resources to pursue those stories despite the risk of libel lawsuits, "smaller organizations cannot begin to afford it . . . and could be deterred from hard-hitting and libel-risky journalism in the future."

"The fact that CBS came out so well does not preclude the possibility that the lesson learned by the press might be to take it easier, to proceed more softly, more gently," Abrams said.

"If news organizations let up a bit, no one would ever know it—newspapers, screens would still be filled with news. The sort of reporting that is libel risky is the sort of material that serves the public in a unique way. If the press lets up, I'm afraid the public will never know what it has lost."

Ira Glasser, executive director of the American Civil Liberties Union, said he is concerned that small news organizations could be bankrupted by a single serious libel lawsuit.

Henry Kaufman, of the Libel Defense Resource Center in New York, said, "It's a case that shouldn't have been brought, shouldn't have been pursued this far." Kaufman said he hopes the dismissal will discourage conservative legal groups that have poured money into the Westmoreland case and other libel lawsuits.

These groups "have the view that libel cases are a good way of challenging what they see as liberal media organizations," he said. "This was the flagship libel case of the right wing. This defeat, especially in light of the defeat of [former Israeli defense minister Ariel] Sharon [in his \$50 million lawsuit against Time Inc.], has to take the heart out of this kind of movement."